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Nos. 89-1027 and 89-1028

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

NORFOLK & WESTERN RAILWAY COMPANY and
SOUTHERN RAILWAY COMPANY,
Petitioners,

v.

AMERICAN TRAIN DISPATCHERS' ASSOCIATION, *et al.*,
Respondents.

CSX TRANSPORTATION, INC.,
Petitioner,

v.

BROTHERHOOD OF RAILWAY CARMEN, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MOTION OF UNION RESPONDENTS FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF

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December 5, 1990

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Comes now the Union Respondents in the above-designated cases and, pursuant to Rules 25.5 and 25.6 of the Rules of this Court, respectfully request this Court to accept the Supplemental Brief included herein. As shown by the accompanying Supplemental Brief, it is

being submitted to bring to this Court's attention an intervening matter, *viz*, the filing with the United States Court of Appeals for the District of Columbia Circuit of a petition to review the decision by the respondent Interstate Commerce Commission on remand from the judgment by the Court of Appeals which is currently before this Court for review on writs of certiorari. This Supplemental Brief could not have been filed before this case was called for oral argument because the filing of the petition to review did not occur until the day after this case was argued before this Court. This petition, the Union Respondents respectfully submit, is relevant to the exercise of this Court's discretionary jurisdiction over the case at bar.

Respectfully submitted,

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SUPPLEMENTAL BRIEF

During the course of the oral argument held before the Court in these cases on December 3, 1990, questions were raised as to the scope of the issues before the Court in its consideration of the authority of the Interstate Commerce Commission ("ICC" or "Commission") under 49 U.S.C. § 11341(a) and the possible limitations imposed by 49 U.S.C. § 11347 upon 49 U.S.C. § 11341(a).

The purpose of this supplemental brief is to inform the Court that on December 4, 1990, the Union Respondents filed under 28 U.S.C. §§ 2321(a) and 2341, *et seq.*, a petition to review the decisions of the ICC following remand to it from the court of appeals by the decisions and orders of that court now under review before this Court in Nos. 89-1027 and 89-1028. That petition has been designated as Case No. 90-1586 by that court.

The petition requests the court of appeals to decide three issues not reached in its decision in the cases pending before this Court, *viz*, whether 49 U.S.C. § 11341(a) authorizes the ICC to foreclose employees' right to resort to Railway Labor Act procedures to protect their contract rights; whether 49 U.S.C. § 11347 authorizes the ICC to compel employees to arbitrate changes in collective bargaining agreements; and whether the abrogation of employee contractual rights and railroad contractual obligations would amount to the improper and uncompensated confiscation of property in contravention of the guarantees of the Due Process and Just Compensation clauses of the Fifth Amendment to the Constitution of the United States.

Respectfully submitted,

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